



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

STATE EMPLOYEES ASSOCIATION OF :
NEW HAMPSHIRE, INC., SEIU LOCAL 1984 :
Petitioner :
v. :
JOHN H. SUNUNU, Chief Executive :
STATE OF NEW HAMPSHIRE and :
THE NEW HAMPSHIRE LIQUOR COMMISSION :
Respondents :

CASE NO. S-0311:1

DECISION NO. 86-55

APPEARANCES

Representing the State Employees Association:

William Briggs, Esq., Staff Counsel

Representing Governor Sununu and the Liquor Commission:

Daniel J. Mullen, Esq., Assistant Attorney General

Also attending:

George E. Liouzis, N. H. Liquor Commission
John R. LaRochelle, Liquor Commission
Carl P. Barton, Liquor Commission
Ann Spear, SEA/SEIU Field Representative
Raymond Proulx, SEA/SEIU
Jerry Tostenson, SEA/SEIU
Paul Sicard, SEA/SEIU

BACKGROUND

The State Employees Association of New Hampshire, Inc., SEIU Local 1984 (SEA) brought an unfair labor practice complaint against Governor John H. Sununu as Chief Executive and the Liquor Commission (Commission) on January 22, 1986 alleging a breach of RSA 273-A:5.

Specifically, SEA alleges that the Commission has adopted the practice of requiring employees to make good on any errors which they commit in arranging for customer purchases by credit cards. SEA alleges that the Commission has failed to negotiate about this practice and is therefore violating RSA 273:5, I (h) and (i).

In its answer, the Civil Bureau of the Attorney General's office asked that the Governor be dismissed as a respondent and for the Commission responds

that while said policy, with minor disparities, is a policy of the Commission, it is not a condition of employment involving employee wages, but rather a matter of managerial policy.

A hearing was held on this matter on June 26, 1986 at the office of the Public Employee Labor Relations Board in Concord with all parties represented.

FINDINGS OF FACT AND RULINGS OF LAW

At the hearing the State renewed its request to dismiss Governor Sununu as a respondent and SEA had no objection. PELRB voted unanimously to dismiss the Governor as a respondent in this action.

1. SEA Representative Ann Spear testified that there was some confusion on whether the payback policy was optional or not and past practice was no guide.
2. Commission employee Raymond Proulx testified that there was no written policy on the pay back of money for credit card errors.
3. Commission employee Jerry Tostenson testified that he was told to track down a customer or pay back the money himself in a case of a credit card mistake. Mr. Tostenson told of spending a significant amount of time and money trying to find the customer. So far as he assumed, the customer paid but at any rate he, Tostenson, never paid the money and was never disciplined.
4. Commission employee, Paul Sicard, testified he was given the option to pay for credit card mistakes or receive disciplinary action after his third such error.
5. Commission Supervisor, John LaRochelle testified that about one-half the liquor stores had credit card purchases; that the money cannot be collected from the purchaser if all the Commission has is the credit card number but no impression of the card and that such errors account for very few transactions. Mr. LaRochelle also testified that the Commission's policy is to issue a letter of warning if the employee doesn't recover or repay money lost through errors and after three such warnings, the individual would be dismissed.
6. Commission Personnel Officer, George Liouzis testified that the store manual dictates that with any negligence with respect to cash, the individual is asked to pay and with respect to credit cards, the individual is expected to recover the payment or pay himself.
7. The Liquor Commission has adopted a policy, for credit card errors requiring the employee to make restitution to the Commission. Failing restitution, the Commission intends to issue a warning to the employee.
8. The Commission policy on credit card errors is not a disciplinary proceeding and no letter of warning is necessarily issued if the individual makes restitution. This policy of restitution therefore is not appealable under the Personnel Rules of the State. Neither is the policy grievable under

the contract since there are no contract provisions with respect to restitution for credit card errors.

RULINGS OF LAW

We believe, following PELRB Decision No. 77-08 dated February 24, 1977 and State Employees Association of New Hampshire, Inv. v. PELRB, 118 NH 885, 397 A.2d 1035 (12/29/78), that PERLB should decide when specific items are "proper subjects of negotiation".

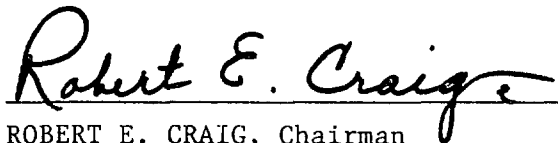
We believe that insofar as Commission policy in this matter could ultimately reduce the wages of employees to a substantial degree, without the involvement of the employee's representative, the implementation of such a policy must, under RSA 273-A, be a mandatory subject of negotiation.

We also believe that a policy of restitution, without a finding of carelessness or recklessness or other misbehavior (for disciplinary action) amounts to a "condition of employment" as relevant and as serious for the employee as are "wages and hours" and as such is a mandatory subject of bargaining.

The Commission has obviously attempted to find a way of carrying out its duty without harsh punishment for any employee(s) who has/have made inadvertent errors in credit card purchases. We respect the Commission for its intent. We must find, however, that the implications of the restitution policy are that its implementation must be negotiated with the exclusive representative of the effected employees.

DECISION AND ORDER

- (a) We find that N. H. Liquor Commission has committed an unfair labor practice violating RSA 273-A:5, I (e), (h), (i) and;
- (b) We order the Commission to repay any monies to any employee(s) who has incurred a personal liability under the new policy of restitution and
- (c) We order the Commission to Cease and Desist in the implementation of this policy until they have negotiated with the exclusive representatives of the effected employees.



ROBERT E. CRAIG, Chairman
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 11th day of September, 1986.

By unanimous vote. Chairman Robert E. Craig presiding. Members Richard W. Roulx, Seymour Osman and Daniel Toomey present and voting. Also present, Executive Director Evelyn C. LeBrun.